

OPINION
43-84

June 10, 1943 (OPINION)

REGISTER OF DEEDS

RE: Deposit of County Funds

We have your letter of May 7th, in connection with the Register of Deeds of your county, who deposits his fees in one of the local banks and turns it over to the County Treasurer by check within three days after the close of each calendar month. The state examiner has objected to this practice and you inquire our opinion.

We have very carefully considered this matter and we are of the opinion that the state examiner is right and that the Register of Deeds should discontinue this practice. The law apparently contemplates that the County Treasurer shall be the sole custodian of the moneys belonging to the county. Chapter 95 of the Session Laws of 1933 relates to trust funds received by the sheriff, clerk of court and public administrator. These are not fees but are deposits in court and, in the case of public administrators, moneys belonging to estates in his hand, etc. This law specifically provides that such moneys must be deposited with the County Treasurer. Of course, this law does to apply by its terms to the Register of Deeds, but I cited to show that the Legislature did not approve of moneys being put into banks by individual officers and insisted that all such moneys be turned over immediately to the County Treasurer, as the official custodian of county funds. The law requires that fees and taxes received by the various officers be turned over to the County Treasurer. When the Register of Deeds turns over the money that he has received for fees to a bank, he is turning over county property to someone else than the County Treasurer. It is true that he maintains a certain control over it because he is the depositor of the bank account, but nevertheless he has surrendered actual custody of the money to some other person than the County Treasurer. This money is actually county money, it does not belong to the Register of Deeds as an individual. In most cases, counties have on hand in banks more money than is covered by the FDIC guarantee and of course most guarantee bonds and depository bonds cover only the moneys deposited by the County Treasurer. Consequently, we believe that if the Register of Deeds should die or the bank should fail, there would be considerable difficulty and perhaps an impossibility of getting the money back for the county. If the Register of Deeds should die, the only way of getting the money would be to have a probate of his estate and the county to file a claim for the money. If the bank should fail, the depository bond perhaps would not cover the fund since it was not deposited by the County Treasurer, and the FDIC being limited to \$5000.00 for any one owner would satisfy their obligation if they paid the county the \$5000.00, and since the money deposited by the Register of Deeds would actually be county money, it would be satisfied by the payment of the one guaranteed sum.

We believe that the only logical interpretation of the statutes involved and the duties of the County Treasurer and the Register of Deeds are that the Register of Deeds should turn all moneys over to the County Treasurer, and not turn them over to an intermediary, such as the bank subject to check or draft such as he is doing in this instance. We believe it is for the best interest not only of the county itself, but of the various individual officers that all money should be immediately turned over to the County Treasurer and not deposited in an account for the Register of Deeds himself.

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Attorney General